

AR1583

SDMS # 31317

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)

Siemens Components, Inc.)
Respondent)

Proceeding Under Sections 104(a),)
106(a) and 122 of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act of 1980 (42 U.S.C.)
§§ 9604(a), 9606(a), 9622), as)
amended by the Superfund Amendments)
and Reauthorization Act of 1986.)

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. 89-12

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1 I. JURISDICTION

2 This Consent Order is entered into pursuant to the authority
3 vested in the President of the United States by Sections 104(a),
4 122(a) and (d)(3) of the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980 (hereinafter referred to
6 as "CERCLA"), 42 U.S.C. §§ 9604(a), 9622(a) and (d)(3), as
7 amended by the Superfund Amendments and Reauthorization Act of
8 1986 (hereinafter referred to as "SARA"), Pub. L. No. 99-499, 100
9 Stat. 1613 (1986), and delegated to the Administrator of the
10 United States Environmental Protection Agency (hereinafter
11 referred to as "EPA") on January 23, 1987, by Executive Order
12 12580, 52 Fed. Reg. 2923, and further delegated to the Assistant
13 Administrator for Solid Waste and Emergency Response and the
14 Regional Administrators by EPA Delegation 14-8-A, 14-14-C, and
15 redelegated to the Director, Toxics and Waste Management Divi-
16 sion, EPA, Region IX. Notice of this Order has been given to the
17 State of Arizona.

18 Siemens Components, Inc. ("Siemens") and EPA have entered
19 into this Order in order to facilitate the ongoing investigation
20 of groundwater conditions in the Indian Bend Wash ("IBW") area.
21 Nothing in this Order is intended as or should be construed to be
22 an admission of any issue of fact or law by Siemens.

23 Siemens agrees to undertake all actions required by the
24 terms and conditions of this Consent Order. Siemens consents to
25 and will not contest EPA jurisdiction regarding this Consent Or-
26 der.

1 II. STATEMENT OF PURPOSE

2 In entering into this Consent Order, the mutual objectives
3 of EPA and Siemens are to install certain monitoring wells as
4 part of the remedy selected in the September 1988 Record of Deci-
5 sion ("ROD") for the Scottsdale Groundwater Operable Unit
6 ("Operable Unit") at the North Indian Bend Wash Site ("Site").

7 The activities conducted pursuant to this Consent Order are
8 subject to review by EPA and, if performed in full accordance
9 with the requirements set forth herein and all applicable EPA
10 guidance and policies, shall be deemed consistent with the Na-
11 tional Contingency Plan, 40 C.F.R. Part 300.68 (a)-(j) (47 Fed.
12 Reg. 31180 (July 16, 1982), revised at 48 Fed. Reg. 40658
13 (September 8, 1983)), and revisions made thereto, pursuant to the
14 provisions of 42 U.S.C. § 9605(b).

15 III. BACKGROUND

16 1. The information gathered in Phase I of the IBW remedial
17 investigation indicated that groundwater in each of the three
18 hydrogeologic units present in the Indian Bend Wash area are cer-
19 tain volatile organic compounds ("VOCs") which are typically as-
20 sociated with industrial solvents. The primary contaminants lo-
21 cated in the monitoring wells in the area are trichloroethylene
22 (TCE), 1,1,1-trichloroethane (TCA), tetrachlorethylene (PCE),
23 1,1-dichloroethene (DCE) and small quantities of chloroform
24 (CFM).

25 2. In September, 1988 the Regional Administrator signed the
26 ROD, which selected a remedy for the Operable Unit. The selected
27 remedy includes extracting groundwater from the Middle Alluvium
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1 Unit ("MAU") and Lower Alluvium Unit ("UAU") by pumping existing
2 City of Scottsdale wells and monitoring the effectiveness of the
3 pumping system in removing VOCs from the MAU and UAU. The in-
4 stallation of monitoring wells as part of the selected remedy at
5 the IBW site is the subject of this Order.

6 IV. DETERMINATIONS AND FINDINGS

7 EPA has made the following Determinations and Findings:

8 1. Siemens was the owner and operator of a facility, as
9 defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as
10 the term is used in Sections 104(a) and 122(a) of CERCLA, 42
11 U.S.C. §§ 6904(a), 6922(a).

12 2. Siemens is a person, as defined in Section 101(21) of
13 CERCLA, 42 U.S.C. § 9601(21).

14 3. Wastes and constituents thereof generated by Siemens are
15 "hazardous substances," as defined in Section 101(14) of CERCLA,
16 42 U.S.C. § 9601(14).

17 4. The past, present, and potential migrations of hazardous
18 substances in the Indian Bend Wash site may constitute actual and
19 threatened "releases," as defined in Section 101(22) of CERCLA,
20 42 U.S.C. § 9601(22).

21 5. Siemens is a potentially responsible party pursuant to
22 Section § 107(a) of CERCLA, 42 U.S.C. § 9607(a).

23 6. There have been actual and threatened releases of haz-
24 ardous substances from the Site to the environment.

25 7. Siemens will retain a suitable contractor, and is there-
26 fore qualified to conduct portions of the remedy.

27 8. The actions required by this Consent Order protect the
28

1 public health and welfare and the environment.

2 V. WORK TO BE PERFORMED

3 All work performed pursuant to this Consent Order shall be
4 under the direction and supervision of a qualified contractor
5 with expertise in investigation, analysis and remedy of hazardous
6 waste problems. Siemens has notified EPA that their contractor
7 for this project shall be the Levine-Fricke, Consulting Engineers
8 and Hydrogeologists ("Levine-Fricke"). Siemens shall notify EPA
9 in writing of the name, title, and qualifications of any replace-
10 ment or additional contractors and/or subcontractors to be used
11 in carrying out the terms of this Consent Order. EPA will con-
12 tract with a qualified person to oversee and review the conduct
13 of the RI/FS work.

14 Based on the foregoing, it is hereby AGREED TO AND ORDERED
15 that the following work shall be performed:

16 1. Siemens shall perform the tasks and submit reports iden-
17 tified in Attachment A. This work shall be performed in accor-
18 dance with the requirements of the National Oil and Hazardous
19 Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part
20 300, EPA RI/FS guidances (including "Guidance on Remedial Inves-
21 tigation under CERCLA," June 1985 and "Guidance on Feasibility
22 Studies under CERCLA," June 1985) and with the standards,
23 specifications and schedules contained in the IBW RI/FS QAPP and
24 this Consent Order.

25 2. Any reports, plans, specifications, schedules and attach-
26 ments required by this Consent Order are, upon approval by EPA,
27 incorporated into this Order. Any non-compliance with such EPA
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1 approved reports, plans, specifications, schedules and attach-
2 ments, unless otherwise excused by EPA in writing, shall be con-
3 sidered a failure to achieve the requirements of this Consent Or-
4 der and will subject Siemens to the provision of Section XIII
5 (Stipulated Penalties) of this Consent Order.

6 3. Siemens agrees to install a total of four groundwater
7 monitoring wells ("the Wells") in the Indian Bend Wash site as
8 part of the remedy for the Operable Unit. Two wells shall be lo-
9 cated at site AA and two wells shall be located at site BB, as
10 identified in Attachment B attached hereto and incorporated
11 herein. At each site, one well shall extend to the MAU and one
12 well shall extend to the UAU. The MAU and LAU wells at Site AA
13 shall be known respectively as S-1MA and S-1LA. The MAU and LAU
14 wells at Site BB shall be known respectively as S-2MA and S-2LA.
15 The Wells shall be installed in accordance with the Sampling and
16 Analysis Plan (SAP) attached as Attachment C.

17 4. Siemens shall collect and analyze the samples from the
18 Wells for all priority pollutants, excluding pesticides and in-
19 cluding cations and anions, specific electrical conductance, tem-
20 perature and pH. Siemens shall sample the wells on a quarterly
21 basis until the issuance of the ROD for the Site.

22 5. Samples collected during the first round of sampling the
23 Wells will be analyzed and results transmitted to EPA within two
24 weeks of sampling the Wells if the levels of any contamination is
25 equal to, or greater than, the primary drinking water standard.
26 Results of the second round of sampling will be analyzed and
27 transmitted to EPA within sixty (60) days of sampling the Well.
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1 6. Siemens shall make available to EPA, upon request, a
2 split sample of all samples taken by Siemens or its authorized
3 representatives. Siemens or its contractors have the right to
4 request and receive split samples from any monitoring well at the
5 Site sampled by EPA and its contractors. The identification and
6 maintenance of all split samples shall be in accordance with the
7 QAPP entitled "Quality Assurance Project Plan, Indian Bend Wash
8 and Phoenix-Litchfield Airport Area Site, Phoenix, Arizona,"
9 November, 1984 which is incorporated by reference.

10 7. Documents, including reports, approvals, disapprovals,
11 and other correspondence, to be submitted pursuant to this Con-
12 sent Order, shall be sent by overnight mail to the following ad-
13 dresses or to such other addresses as the Siemens or EPA
14 hereafter may designate in writing:

15 a. Documents to be submitted to EPA under the terms of this
16 Consent Order should be distributed as follows:

17 (i) One copy of all document types to be sent via
18 overnight mail to:

19 Jeffrey Rosenbloom, (T-4-2)
20 Superfund Enforcement Section
21 US EPA, Region IX,
22 215 Fremont Street
23 San Francisco, CA 94105

24 cc: Robert W. Bergstrom, Esq.
25 Office of Regional Counsel
26 U.S. Environmental Protection Agency
27 215 Fremont Street
28 San Francisco, CA 94105

 b. All notices and determinations required by this Order
shall also be sent to:

1 Thomas McGeough
2 Siemens Components, Inc.
3 186 Wood Avenue
4 Iseland, NJ 08830

5 cc: Priscilla Rosenberg, Esq.
6 Siemens Corporation
7 767 Fifth Avenue
8 New York, NY 10153

9 David J. Hayes, Esq.
10 Hogan & Hartson
11 555 13th St., N.W.
12 Washington, D.C. 20004

13 VI. SUBMITTAL SCHEDULES

14 Siemens shall begin the Wells installation program within
15 thirty (30) calendar days of the effective day of this Consent
16 Order, subject to the availability of access to the well drilling
17 sites. Siemens shall use its best efforts to complete installa-
18 tion of the Wells within forty five (45) calendar days of the ef-
19 fective date of this Order, but shall complete the installation
20 of the Wells within sixty (60) calendar days of the effective
21 date of this Order. Siemens shall submit a completion report
22 setting forth the detailed sampling data on the construction of
23 the Wells and the results of the first sampling round from the
24 Wells within sixty (60) calendar days after completion of instal-
25 lation of the Wells.

26 VII. DESIGNATED PROJECT COORDINATORS

27 1. On or before the effective date of this Consent Order,
28 EPA and Siemens shall each designate a Project Coordinator. Each
Project Coordinator shall be responsible for overseeing the im-
plementation of this Consent Order. The EPA Project Coordinator
will be EPA's designated representative at the Site. To the max-

imum extent possible, communications between Siemens and EPA shall be directed through the Project Coordinators.

2. EPA's Project Coordinator will be:

Jeffrey S. Rosenbloom, T-4-2
Remedial Project Manager
U.S. Environmental Protection Agency
215 Fremont St., San Francisco, CA 94105

Siemens' Project Coordinator will be:

Thomas McGeough
Siemens Components, Inc.
186 Wood Avenue
Iseland, NJ 08830

3. EPA and Siemens each have the right to change their respective Project Coordinator. Such a change shall not be effective until the other party has been notified in writing.

4. The EPA Project Coordinator shall also have the authority vested in the On-Scene-Coordinator ("OSC") by the NCP, unless the EPA designates a separate individual as OSC.

5. The absence of the EPA Project Coordinator or OSC from the Site shall not be cause for the stoppage of work.

VIII. QUALITY ASSURANCE

All field work conducted by Siemens or its contractors pursuant to this Order shall be conducted in accordance with the approved QAPP. Siemens or its contractor will notify the EPA Project Coordinator within fourteen (14) calendar days of the intent to sample the Wells, and indicate which EPA method or methods of analysis will be used.

IX. SITE ACCESS

EPA shall assist Siemens in procuring access to the well drilling sites. Attachment D is the confirmation by the City of

1 Scottsdale that Siemens has all the necessary authorities and
2 permissions to drill the Wells at the locations specified in At-
3 tachment B, and the EPA and its authorized representatives also
4 are entitled to access to the well drilling sites.

5 All parties with site access during the implementation of
6 this Consent Order shall comply with the Levine-Fricke Health &
7 Safety Plan.

8 Siemens assumes full responsibility for any claims arising
9 from the activities conducted by Siemens or its representatives
10 or consultants on third-party property in connection with this
11 Consent Order.

12 X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

13 Siemens shall make available to EPA the results of all sam-
14 pling and/or tests or other data generated by Siemens, or on
15 Siemens' behalf, with respect to the implementation of this Con-
16 sent Order.

17 Under the provisions of § 104(e) of the CERCLA and this Con-
18 sent Order, EPA explicitly reserves the right to oversee the work
19 to be conducted by Siemens, as it is performed. In addition, at
20 the request of EPA, Siemens shall allow split or duplicate
21 samples to be taken by EPA and/or its authorized representatives,
22 of any samples collected by Siemens pursuant to the implementa-
23 tion of this Consent Order.

24 Siemens agrees to provide all data and information relating
25 to the construction, geophysical/hydrogeological condition, and
26 contaminant concentrations of the Wells. Specifically, these
27 data include: raw analytical data, monitoring data, sampling
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1 data, geophysical data, hydrogeological data, and geologic data.

2 Siemens shall notify EPA in a timely manner of any project
3 that is likely to produce data or information of the types
4 described in this section pertaining to the Wells.

5 Siemens recognizes that the data and reports provided to EPA
6 under this Consent Order are not subject to the protection of
7 Section 1905 of Title 18 and 40 C.F.R. Part 2 as confidential
8 business information, in accordance with the provisions of CERCLA
9 § 104(e)(7)(F), 42 U.S.C. § 9604(e).

10 XI. RECORD PRESERVATION

11 Despite any document retention policy to the contrary,
12 Siemens agrees to preserve, for a minimum of six (6) years after
13 the date of issuance of the Record of Decision for the Site, all
14 drilling specifications, contractor invoices, and raw
15 analytical/geophysical/lithological data relating to the Wells.
16 After this six year period, Siemens shall notify EPA within
17 sixty (60) calendar days prior to the destruction of any such
18 documents. Upon request by EPA, Siemens shall make available to
19 EPA such records or copies of any such records. Additionally, if
20 EPA requests that some or all documents be preserved for a longer
21 period of time, Siemens agrees to comply with that request or, at
22 Siemens' option, transfer custody of such documents to EPA. EPA
23 agrees that by virtue of Siemens' disclosure of documents as re-
24 quired under this paragraph, Siemens has not waived its right to
25 assert whatever privileges it may have with respect to other
26 reports, documents, or data.

1 XII. PROPOSED CHANGES AND DISPUTE RESOLUTION

2 Neither party may propose changing the scope of this Consent
3 Order beyond the installation of the four groundwater monitoring
4 Wells. In the event that a dispute arises regarding the im-
5 plementation of this Order, including, for example, good faith
6 objections to EPA notices of disapproval, noncompliance or deci-
7 sion made by EPA pursuant to this Order, there shall be an oppor-
8 tunity for a meeting of the parties. There shall also be an op-
9 portunity for submission of written materials prior to, and at,
10 such meeting for the purpose of considering any proposed changes,
11 and adopting any necessary amendments to this Consent Order. If
12 Siemens so objects to an EPA decision, it shall orally notify EPA
13 immediately, and shall subsequently notify EPA in writing within
14 fourteen (14) days of receipt of the decision. EPA and Siemens
15 then have an additional fourteen (14) days from the receipt by
16 EPA of the notification of objection to meet and reach agreement.
17 This period may be extended by mutual agreement between EPA and
18 Siemens.

19 If agreement cannot be reached on the disputed issue within
20 this fourteen (14) day period, EPA shall provide a written state-
21 ment of its decision to Siemens. If agreement is reached,
22 Siemens shall implement the directives contained in such deci-
23 sion.

24 If agreement on any issue addressed in this Order cannot be
25 reached within sixty (60) days after receipt by EPA of the writ-
26 ten notification of objection, upon agreement of the parties,
27 either party may file a Motion for Dispute Resolution with an ad-
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1 ministrative law judge (ALJ) with jurisdiction over this Consent
2 Order. The Motion for Dispute Resolution shall set forth the
3 matter in dispute and the relief requested. After a final deci-
4 sion is made, either by EPA or by the ALJ, Siemens shall imple-
5 ment the decision. If Siemens should refuse to implement such
6 directives, EPA may elect to perform such work, subject to the
7 provisions of Sections XV and XIII, infra.

8 If the dispute is not resolved by the procedure outlined
9 above, either party may exercise such other administrative or
10 legal remedies as are available under applicable laws and regula-
11 tions. The filing of any administrative or legal action pursuant
12 to this article shall not stay or otherwise delay the performance
13 of any tasks in this Consent Order which are not specifically the
14 subject of the dispute.

15 The imposition or amount of Stipulated Penalties shall not
16 be subject to Dispute Resolution.

17 XIII. STIPULATED PENALTIES

18 Pursuant to 42 U.S.C. §§ 9622(e) and 9609, the parties agree
19 that stipulated penalties shall be paid by Siemens for any
20 failure to comply with the requirements of this Consent Order,
21 including untimely or inadequate submittals or work required un-
22 der the terms of this Consent Order.

23 Siemens shall pay the sum set forth below as stipulated
24 penalties into the Hazardous Substance Response Trust Fund within
25 thirty (30) days of notification that stipulated penalties have
26 been triggered.

27 Siemens shall pay the following sums for failure to comply
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with Sections V.3 and VI above:

<u>Day of Violation</u>	<u>Penalty Per Day</u>
1-7	\$ 3,500
8-30	7,500
31 and beyond	15,000

Siemens shall pay the following sums for failure to comply with Sections V.3, V.4 and all other requirements of this Consent Order.

<u>Day of Violation</u>	<u>Penalty Per Day</u>
1-7	\$ 1,000
8-30	2,000
31 and beyond	5,000

The penalties for failure to submit a deliverable or to otherwise comply with the requirements of this Consent Order shall commence upon the receipt of a notice of inadequacy from EPA, which shall set forth the deficiencies of the deliverable or performance or nonperformance by Siemens. These penalties shall accrue until receipt by EPA of the late deliverable, or of the revised deliverable which cures the deficiencies or performance by Siemens of the identified tasks in accordance with the requirements of this Consent Order.

Penalties shall accrue during a dispute under the provisions of Section XII, supra, but will not be demanded during this period. If Siemens loses upon final resolution, however, Siemens shall pay all penalties which accrued prior to and during the period of dispute.

Neither the invocation of the Dispute Resolution measures nor the payment of the penalties alter Siemens' obligations to

1 complete performance under this Consent Order. The stipulated
2 penalties set forth in this Section do not preclude EPA from
3 electing to pursue any other remedies or sanctions which may be
4 available to EPA by reason of the Siemens' failure to comply with
5 any of the requirements of this Consent Order, including an ac-
6 tion in District Court to enforce the provisions of this Consent
7 Order, statutory penalties as authorized by Sections 104, 106,
8 and 109 of CERCLA, a federally-funded response action, and a suit
9 for reimbursement of costs incurred by the United States and the
10 State of Arizona.

11 In the event the EPA makes such an election, however, and
12 initiates an action for administrative or judicial relief seeking
13 monetary penalties for violations of this Consent Order, EPA will
14 not seek the penalties provided for under this Section for the
15 specific violation of this Consent Order. If EPA assesses stipu-
16 lated penalties for a failure to comply with the terms of this
17 Consent Order, however, this paragraph specifically shall not
18 preclude EPA from simultaneously seeking non-monetary relief.

19 Failure to pay a stipulated penalty on time is an additional
20 violation of the Order subject to stipulated penalties.

21 In the event the United States assumes the performance of a
22 portion or all of the work to be performed under this Order, pur-
23 suant to Section XV (Reservation of Rights), Siemens shall be li-
24 able for stipulated penalties pursuant to this Section.

25 Checks for stipulated penalties assessed under this Consent
26 order should be addressed to:

1 U.S. Environmental Protection Agency
2 Superfund Accounting - Region 9
3 P.O. Box 360863M
4 Pittsburgh, PA 15251

5 A copy of the check and the letter forwarding the check
6 should also be sent to the EPA Project Coordinator.

7 XIV. FORCE MAJEURE

8 If any event occurs which causes delay in the achievement of
9 the requirements of this Consent Order, Siemens shall bear the
10 burden of demonstrating that the delay was caused by cir-
11 cumstances beyond the control of Siemens or its contractor and
12 could not have been overcome by Siemens' best efforts. Siemens
13 shall promptly notify EPA's Project Coordinator orally and shall,
14 within seven (7) calendar days of oral notification to EPA,
15 notify EPA in writing of the anticipated length and cause of the
16 delay, the measures taken and/or to be taken to prevent or mini-
17 mize the delay, and the timetable by which the Siemens intends to
18 implement these measures. Failure of Siemens to comply with
19 these notice requirements will constitute a waiver of any claim
20 of Force Majeure. Siemens shall adopt all reasonable measures to
21 avoid or minimize any delay caused by a Force Majeure.

22 If EPA determines that the delay or anticipated delay has
23 been or will be caused by circumstances beyond the control of
24 Siemens, the time for performance shall be extended for a period
25 equal to the delay resulting from such circumstances. Disputes
26 about whether the circumstance was beyond the control of Siemens
27 or whether the extension of the time period is appropriate shall
28 be subject to Dispute Resolution, Section XII.

If it is determined that the delay was not beyond the con-

1 trol of Siemens, this delay shall constitute non-compliance with
2 the Consent Order, and penalties shall accrue from the time of
3 non-compliance.

4 Increased cost of performance of the terms of this Order,
5 changed economic circumstances, or failure to timely and ade-
6 quately apply for any required approvals shall not be considered
7 circumstances beyond the control of Siemens.

8 XV. RESERVATION OF RIGHTS

9 EPA and Siemens expressly reserve all rights and defenses
10 that they may have under applicable law, including EPA's right
11 both to disapprove of work performed by Siemens and to request
12 that Siemens perform tasks in addition to those detailed in this
13 Consent Order, pursuant to Section XII of this Consent Order
14 (Proposed Changes and Dispute Resolution). If, pursuant to the
15 procedures outlined in Section XII, supra, additional work is
16 agreed upon by the parties, the additional work shall be com-
17 pleted in accordance with the standards, specifications, and
18 schedule approved by EPA. The appropriate sections and attach-
19 ments of this document shall be amended to include any additional
20 work which is to be performed. EPA also reserves the right to
21 conduct such additional tasks.

22 Siemens is not released from liability for any actions
23 beyond the terms of this Consent Order. EPA reserves the right
24 to take any enforcement action pursuant to CERCLA or any other
25 legal authority, including the right to seek injunctive relief,
26 monetary penalties and punitive damages, except as discussed
27 above in Section XIII.

1 In the event that Siemens declines to perform any additional
2 and/or modified tasks, EPA will have the right to undertake any
3 removal and Remedial Investigation and Feasibility Study (RI/FS)
4 action at any time to the extent EPA has such rights under
5 CERCLA, the NCP and applicable law. EPA reserves the right to
6 seek reimbursement from Siemens for any response costs incurred
7 by the United States or the State of Arizona pursuant to Section
8 107 of CERCLA and any other applicable law, to the extent such
9 recovery is consistent with CERCLA, the NCP and such other ap-
10 plicable law.

11 EPA agrees that, if performed in full accordance with the
12 requirements set forth herein, the work designated to be per-
13 formed by Siemens under this Order is consistent with the Na-
14 tional Contingency Plan, 40 C.F.R. Part 300, promulgated by EPA
15 pursuant to Section 105 of CERCLA.

16 In the event that EPA initiates an action pursuant to Sec-
17 tion 106 or 107 of CERCLA against any person, and Siemens is or
18 becomes a party in the action from whom a response costs is
19 sought, Siemens and EPA shall suggest to the court that the work
20 performed by Siemens in accordance with the provisions of this
21 Consent Order be considered satisfactory in determining the
22 amount, if any, of Siemens' liability for response or remedial
23 costs in the IBW area.

24 By entering into this Consent Order, Siemens does not admit
25 the accuracy of any determination or finding made herein by EPA,
26 any liability under any Federal or State statute for response
27 costs at the IBW Site, or for any other liability relating to the
28

1 IBW site or Siemens' former activity in the IBW area.

2 XVI. REIMBURSEMENT OF OVERSIGHT COSTS

3 Under the provisions of Section 104(a) of CERCLA, as
4 amended, Siemens shall reimburse the Hazardous Substances Super-
5 fund for EPA oversight costs incurred by EPA with respect to this
6 Order to the extent required by applicable law. No more than an-
7 nually, EPA shall submit to Siemens a detailed accounting of all
8 costs incurred by the U.S. Government to oversee and review the
9 work performed by Siemens under this Consent Order. These over-
10 sight costs include, but are not limited to, time and travel
11 costs of EPA employees, agents and contractors, compliance
12 monitoring in the field, analysis of samples, review of
13 deliverables submitted by Siemens, and tracking of Siemens' com-
14 pliance with the terms of this Consent Order. Siemens shall,
15 within 30 calendar days of receipt of that accounting, remit a
16 check for the amount of those costs, made payable to the Hazard-
17 ous Substance Superfund. Checks shall specifically reference the
18 Indian Bend Wash site, and be addressed to:

19 U.S. Environmental Protection Agency
20 Superfund Accounting - Region 9
21 P.O. Box 360863M
22 Pittsburgh, PA 15251

23 A copy of the transmittal letter and a copy of the check
24 should be sent to the EPA Project Coordinator.

25 XVII. OTHER CLAIMS

26 Nothing in this Consent Order shall constitute or be con-
27 strued as a release from any claim, cause of action or demand in
28 law or equity against any person, firm, partnership, or corpora-
tion not a signatory to this Consent Order for any liability it

1 may have arising out of or relating in any way to the generation,
2 storage, treatment, handling, transportation, release, or dis-
3 posal of any hazardous substances, hazardous wastes, pollutants,
4 or contaminants found at the Site.

5 Nothing in this Consent Order constitutes a preauthorization
6 of funds under Section 111(a)(2) of CERCLA. In light of this
7 Consent Order, Siemens waives its right to make a claim against
8 the Superfund under Section 106(b)(2) for the costs of the work
9 to be performed under this Consent Order.

10 XVIII. OTHER APPLICABLE LAWS

11 All actions required to be taken pursuant to this Consent
12 Order shall be undertaken in accordance with the requirements of
13 all applicable local, state, and federal environmental laws,
14 regulations, and in accordance with substantive permitting re-
15 quirements, to the extent required by § 121(e) of CERCLA and the
16 National Contingency Plan ("NCP"), 40 C.F.R § 300.68(a)(3).

17 Siemens' obligation to install and sample the monitoring
18 Wells and perform pump tests under the provisions of this Consent
19 Order is conditioned upon the determination by EPA that an NPDES
20 permit is not required for such work, pursuant to the NCP.
21 However, Siemens shall comply with all substantive requirements
22 of any applicable permit.

23 XIX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

24 Siemens agrees to indemnify and save and hold the United
25 States Government, its agencies, departments, agents, and
26 employees, and contractors, harmless from any and all claims or
27 causes of action arising from or on account of acts or omissions
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1 of Siemens, its officers, employees, receivers, trustees, agents,
2 contractors, or assigns, in carrying out the activities pursuant
3 to this Consent Order. The United States Government or any other
4 agency thereof is not a party in any contract entered into by
5 Siemens or its consultants in carrying out activities at the Site
6 pursuant to this Consent Order.

7 XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

8 In consideration of the communications between Siemens and
9 EPA prior to the issuance of this Consent Order concerning its
10 terms, Siemens agrees that there is no need for a settlement con-
11 ference with respect to the entry of this Consent Order prior to
12 the effective date hereof. Therefore, the effective date of this
13 Consent Order shall be the date on which it is signed by EPA.

14 This Consent Order may be amended by mutual agreement of EPA
15 and Siemens. Such amendments shall be in writing and shall have
16 be effective on the date on which such amendments are signed by
17 EPA.

18 Any reports, plans, specifications, schedules, and attach-
19 ments required of Siemens under this Consent Order are, upon ap-
20 proval by EPA, incorporated into this Consent Order. Any non-
21 compliance with such EPA approved reports, plans, specifications,
22 schedules, and attachments shall be considered a failure to
23 achieve the requirements of this Consent Order and will subject
24 Siemens to the provisions included in the "Stipulated Penalties"
25 (Section XIII) of this Consent Order.

26 No informal advice, guidance, suggestions, or comments by
27 EPA regarding reports, plans, specifications, schedules, and any
28

1 other writing submitted by Siemens will be construed as relieving
2 Siemens of its obligation to obtain such formal approval as may
3 be required by this Consent Order.

4 XXI. PARTIES BOUND

5 This Consent Order shall apply to and be binding upon
6 Siemens, its agents, successors, assigns and (with the exception
7 of Section XIII) all persons, contractors, and consultants acting
8 under or for Siemens.

9 No change in ownership or corporate status relating to
10 Siemens will in any way alter Siemens' responsibility under this
11 Consent Order. Siemens will be responsible, and will remain
12 responsible for carrying out all activities required of Siemens
13 under this Consent Order.

14 XXII. NOTICE TO THE STATE

15 EPA has notified the State of Arizona pursuant to the re-
16 quirements of Section 106(a) of CERCLA.

17 XXIII. SATISFACTION

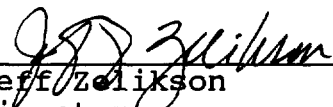
18 The provisions of this Consent Order shall be deemed
19 satisfied upon Siemens' receipt of written notice from EPA that
20 Siemens has demonstrated, to the satisfaction of EPA, that all of
21 the terms of this Consent Order have been completed.

22 XXIV. REPRESENTATIVE AUTHORITY

23 Each undersigned representative of the parties to this Con-
24 sent Order certifies that he or she is fully authorized to enter
25 into the terms and conditions of this Consent Order and to ex-
26 ecute and to legally bind such party to this document.

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3 IT IS SO AGREED AND ORDERED:


4 UNITED STATES ENVIRONMENTAL
5 PROTECTION AGENCY

6 
7 Jeff Zelickson
8 Director
9 Hazardous Waste Management Division

Date: 7-13-89

10 SIEMENS COMPONENTS, INC.

11 BY:

12 
13 Thomas J. McGeough
14 Name: Thomas J. McGeough
15 Title: Director, Business Administration

Date: 7/12/89

16 Effective Date: 7-13-89
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Attachment A

REPORTS, PLANS, AND TASKS UNDER THIS CONSENT ORDER

1. Sample and Analysis Plan (Attachment C) that includes:

- Well design and drilling specifications;
- Well installation procedures;
- Lithologic methods;
- Sampling protocols;
- Blanks, duplicates, replicates;
- Suite of analysis;
- Analytical methods.

2. Install wells in accordance to specifications in SAP (Attachment C)

3. Sample wells for the following constituents for the first sampling event

- All priority pollutants excluding pesticides;
- Cations and anions;
- Specific electrical conductance;
- Temperature;
- pH.

4. Prepare and submit Completion Report

This report shall include the following for each well:

- As-built drawing of well;
- Lithologic logs;
- Geophysical logs (caliper, SP, resistivity, single point (16-inch, 64-inch), and natural gamma);
- Results of short-term aquifer test;
- Results of first sampling round.

5. Submit sample results to EPA

Sample results shall be submitted to EPA as called for in the Consent Order.

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ATTACHMENT B

[Location of Wells; to be completed by Levine-Fricke]

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ATTACHMENT C
[Sampling and Analysis Plan;
draft to be completed by Levine-Fricke]

ATTACHMENT D

[Confirmation by the City of Scottsdale that Siemens
has all necessary authorities and permissions
to drill the Wells; to be completed]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

July 13, 1989

David Hayes, Esq.
Hogan and Hartson
555 Thirteenth St., N.W.
Washington, D.C. 20004

Re: Administrative Order on Consent, Docket No. 89-12

Dear Mr. Hayes:

Enclosed please find an signed copy of the Administrative Order on Consent, Docket No. 89-12 with an effective date of July 13, 1989. If you should have any technical questions, please call Jeff Rosenbloom at (415) 974-7997. All other inquiries should be sent to my attention at (415) 974-9606.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Bergstrom".

Robert W. Bergstrom
Assistant Regional Counsel

Enclosure